

# Mao Declaration

## Exhibit 63

Investigation of Competition in Digital Markets, Majority Staff  
Report and Recommendations Subcommittee on Antitrust,  
Commercial and Administrative Law of the Committee of the  
Judiciary (2020)

# INVESTIGATION OF COMPETITION IN DIGITAL MARKETS

---

## MAJORITY STAFF REPORT AND RECOMMENDATIONS

### SUBCOMMITTEE ON ANTITRUST, COMMERCIAL AND ADMINISTRATIVE LAW OF THE COMMITTEE ON THE JUDICIARY

---

Jerrold Nadler, Chairman, Committee on the Judiciary

David N. Cicilline, Chairman, Subcommittee on  
Antitrust, Commercial and Administrative Law



UNITED STATES  
2020

**MAJORITY STAFF**

**SUBCOMMITTEE ON ANTITRUST, COMMERCIAL AND ADMINISTRATIVE LAW**

**SLADE BOND**

Chief Counsel

**LINA KHAN**

Counsel

**PHILLIP BERENBROICK**

Counsel

**JOSEPH EHRENKRANTZ**

Special Assistant

**AMANDA LEWIS**

Counsel on Detail, Federal Trade Commission

**ANNA LENHART**

Technologist

**CATHERINE LARSEN**

Special Assistant

**JOSEPH VAN WYE**

Professional Staff Member

**COMMITTEE ON THE JUDICIARY**

**PERRY APELBAUM**

Staff Director and Chief Counsel

**AARON HILLER**

Deputy Chief Counsel

**SHADAWN REDDICK-SMITH**

Communications Director

**JESSICA PRESLEY**

Director of Digital Strategy

**MADELINE STRASSER**

Chief Clerk

**AMY RUTKIN**

Chief of Staff

**JOHN WILLIAMS**

Parliamentarian

**DANIEL SCHWARZ**

Director of Strategic Communications

**MOH SHARMA**

Director of Member Services and  
Outreach & Policy Advisor

**JOHN DOTY**

Senior Advisor

**DAVID GREENGRASS**

Senior Counsel

**ARYA HARIHARAN**

Deputy Chief Oversight Counsel

**MATTHEW ROBINSON**

Counsel

**KAYLA HAMEDI**

Deputy Press Secretary

**NATHAN ADAL**

Legal Fellow

**KARNA ADAM**

Legal Fellow

**WILLIAM BEKKER**

Legal Fellow

**KYLE BIGLEY**

Legal Fellow

**MICHAEL ENSEKI-FRANK**

Legal Fellow

**BENJAMIN FEIS**

Legal Fellow

**CORY GORDON**

Legal Fellow

**ETHAN GURWITZ**

Legal Fellow

**DOMENIC POWELL**

Legal Fellow

**ARMAN RAMNATH**

Legal Fellow

**REED SHOWALTER**

Legal Fellow

**JÖEL THOMPSON**

Legal Fellow

**KURT WALTERS**

Legal Fellow

**KRYSTALYN WEAVER**

Legal Fellow

## TABLE OF CONTENTS

I.	INTRODUCTION .....	6
A.	Chairs’ Foreword .....	6
B.	Executive Summary .....	9
1.	Subcommittee’s Investigation .....	9
2.	Findings .....	10
3.	Recommendations .....	19
II.	THE INVESTIGATION OF COMPETITION IN DIGITAL MARKETS .....	21
A.	Requests for Information and Submissions .....	21
1.	First-Party Requests for Information .....	21
2.	Process for Obtaining Responses to First-Party Requests .....	25
3.	Third-party Requests for Information .....	26
4.	Antitrust Agencies Requests for Information .....	28
B.	Hearings .....	29
C.	Roundtables .....	31
D.	Prior Investigations .....	32
III.	BACKGROUND .....	36
A.	Overview of Competition in Digital Markets .....	36
1.	The Role of Competition Online .....	36
2.	Market Structure .....	37
3.	Barriers to Entry .....	40
B.	Effects of Platform Market Power .....	46
1.	Innovation and Entrepreneurship .....	46
2.	Privacy and Data Protection .....	51
3.	The Free and Diverse Press .....	57
4.	Political and Economic Liberty .....	73
IV.	MARKETS INVESTIGATED .....	77
A.	Online Search .....	77
B.	Online Commerce .....	84
C.	Social Networks and Social Media .....	88
1.	Social Networks are Distinguishable from Social Media .....	90
2.	Market Concentration .....	92
D.	Mobile App Stores .....	93
E.	Mobile Operating Systems .....	100

F.	Digital Mapping .....	107
G.	Cloud Computing .....	109
H.	Voice Assistant .....	120
I.	Web Browsers .....	126
J.	Digital Advertising.....	129
V.	DOMINANT ONLINE PLATFORMS .....	132
A.	Facebook .....	132
1.	Overview .....	132
2.	Social Networking .....	133
3.	Digital Advertising .....	170
B.	Google.....	174
1.	Overview .....	174
2.	Search .....	176
3.	Digital Advertisements.....	206
4.	Android and Google Play Store.....	211
5.	Chrome .....	223
6.	Maps .....	230
7.	Cloud .....	245
C.	Amazon .....	247
1.	Overview .....	247
2.	Amazon.com.....	254
3.	Fulfillment and Delivery .....	302
4.	Alexa’s Internet of Things Ecosystem .....	305
5.	Amazon Web Services .....	316
D.	Apple.....	330
1.	Overview .....	330
2.	iOS and the App Store.....	334
3.	Siri Intelligent Voice Assistant.....	373
VI.	RECOMMENDATIONS.....	376
A.	Restoring Competition in the Digital Economy.....	377
1.	Reduce Conflicts of Interest Thorough Structural Separations and Line of Business Restrictions .....	378
2.	Implement Rules to Prevent Discrimination, Favoritism, and Self-Preferencing.....	382
3.	Promote Innovation Through Interoperability and Open Access.....	384
4.	Reduce Market Power Through Merger Presumptions .....	387

5.	Create an Even Playing Field for the Free and Diverse Press .....	388
6.	Prohibit Abuse of Superior Bargaining Power and Require Due Process .....	389
B.	Strengthening the Antitrust Laws .....	391
1.	Restore the Antimonopoly Goals of the Antitrust Laws .....	391
2.	Invigorate Merger Enforcement .....	392
3.	Rehabilitate Monopolization Law .....	395
4.	Additional Measures to Strengthen the Antitrust Laws .....	398
C.	Strengthening Antitrust Enforcement .....	399
1.	Congressional Oversight .....	399
2.	Agency Enforcement .....	401
3.	Private Enforcement .....	403
VII.	APPENDIX: MERGERS AND ACQUISITIONS BY DOMINANT PLATFORMS .....	406
A.	Amazon .....	406
B.	Apple .....	414
C.	Facebook .....	423
D.	Google .....	431

amounts of traffic to other sites.”<sup>1176</sup> In response to the Subcommittee’s request for query metrics that would document the underlying trends, however, Google did not produce the relevant data.<sup>1177</sup>

Several enforcement bodies have examined these business practices. Between 2011 and 2013, the Federal Trade Commission pursued an inquiry into Google’s data misappropriation and self-preferencing, among other conduct. Staff at the Bureau of Competition concluded that “the natural and probable effect” of Google’s misappropriation was “to diminish the incentives of vertical websites to invest in, and to develop, new and innovative content.”<sup>1178</sup> On Google’s self-preferencing, staff concluded that Google’s conduct had “resulted in anticompetitive effects,”<sup>1179</sup> but that Google had offered “strong procompetitive justifications.”<sup>1180</sup> In 2017, the European Commission concluded that Google’s self-preferencing in comparison shopping services constituted an illegal abuse of dominance and ordered Google to implement a remedy of “equal treatment.”<sup>1181</sup> The European Commission stated that Google had not “provided verifiable evidence to prove that its conduct is indispensable” to any procompetitive effects.<sup>1182</sup>

## ii. Google Increased Prices for Market Access and Degraded Search Quality

In 2000, Google launched AdWords, which allowed advertisers to pay for keyword-based ads that would appear to the right of Google’s search results.<sup>1183</sup> In the years since, Google has changed the display of the ads on its search engine results page in several ways, most notably by (1) increasing the number of ads placed above organic search results, and (2) blurring the distinction between how ads and organic listings are presented on Google’s search results page. These changes have effectively raised the price that businesses must pay to access users through Google. Market participants told the Subcommittee that Google’s conduct has undermined competition, misled consumers, and degraded the overall quality of Google’s search results—all while enabling Google to further exploit its monopoly over general online search.

---

<sup>1176</sup> *Id.* at 2.

<sup>1177</sup> In a September 2020 response to Chairman Cicilline on this same question, Google disputed Fishkin’s analysis of the data. Google wrote “The fact that a user does not click on a link on a Google Search results page does not mean that the user has been “kept” on Google properties. Searches on Google may result in zero website clicks for many reasons, which is not discernable without directly asking the user why they did not click a link.” CEO Hearing at A-2 (response to Questions for the Record of Sundar Pichai, CEO, Alphabet Inc.).

<sup>1178</sup> FED. TRADE COMM’N, THE FTC REPORT ON GOOGLE’S BUSINESS PRACTICES iii (Aug. 8, 2012), in WALL ST. J. (Mar. 24, 2015), <http://graphics.wsj.com/google-ftc-report/>.

<sup>1179</sup> *Id.* at 80.

<sup>1180</sup> *Id.* at 86.

<sup>1181</sup> Google Search (Shopping) Comm’n Decision at para. 671.

<sup>1182</sup> Summary of Google Search (Shopping) Comm’n Decision at O.J. C 9/13, para. 26 (Dec. 1, 2018), [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0112\(01\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52018XC0112(01)&from=EN).

<sup>1183</sup> Press Release, Google, Google Launches Self-Service Advertising Program (Oct. 23, 2000), <http://googlepress.blogspot.com/2000/10/google-launches-self-service.html>.

Google's clear dominance in online search also gives it significant control over the search advertising market. Publicly available data suggests Google captured around 73% of the search advertising market in 2019.<sup>1184</sup> Submissions from market participants show that many firms spend the vast majority of their ad budgets on Google. For example, one major vertical provider spent significantly more than half of its total ad spend on Google each year from 2016 to 2019, with the second top provider receiving less than 15%.<sup>1185</sup> Public reporting suggests that, as of 2019, Google had increased the price of search ads by about 5% per year, exceeding the U.S. inflation rate at that time of 1.6%.<sup>1186</sup>

Several market participants told Subcommittee staff that their ad spend on Google has increased in large part because Google has made it more difficult for businesses to obtain organic traffic. Partly this follows from Google's preferencing of its own products, which compels demoted firms to pay Google for ad placement as a way to regain visibility. Another notable factor has been Google's decision to increase the number of ads posted above organic search results.

Prior to 2016, Google's design of its search results page placed 8 ads to the right of organic search listings and 3 ads above them.<sup>1187</sup> Google's internal communications show that, as of 2011, the rate of user engagement with right-hand side ads was declining.<sup>1188</sup> Since Google made money from search ads only when users clicked on them, less user engagement meant those ads were becoming less valuable to Google. In February 2011, Sridhar Ramaswamy, senior vice president of ads at Google, noted that "users are no longer looking at the [right-hand side ads]," and stated that Google either needed to "retrain people to look there by putting really good stuff there," or "live with the fact that users are going to stop looking there."<sup>1189</sup> By August 2011, a team at Google known as "Project

---

<sup>1184</sup> Submission from Source 115, to H. Comm. on the Judiciary, 6 (Oct. 22, 2019) (on file with Comm.) (citing Megan Graham, *Amazon Is Eating into Google's Most Important Business: Search Advertising*, CNBC (Oct. 15, 2019), <https://www.cnbc.com/2019/10/15/amazon-is-eating-into-googles-dominance-in-search-ads.html>).

<sup>1185</sup> Submission from Source 3, to H. Comm. on the Judiciary, 8 (Oct. 29, 2019) (on file with Comm.).

<sup>1186</sup> Alistair Barr & Garrit De Vynck, *Airlines, Hotels and Other Brands Are Tired of Paying Google for Their Own Names*, BLOOMBERG (Mar. 9, 2019); see also Mark Irvine, *Average Cost per Click by Country: Where in the World Are the Highest CPCs?*, WORDSTREAM BLOG (Nov. 8, 2018) <https://www.wordstream.com/blog/ws/2015/07/06/average-cost-per-click> (showing that the cost-per-click that Google charges search advertisers in the United States is notably higher than the rate it charges in countries where Google faces more competition).

<sup>1187</sup> Dr. Peter J. Meyers, *Four Ads on Top: The Wait Is Over*, MOZ (Feb. 19, 2016), <https://moz.com/blog/four-ads-on-top-the-wait-is-over>.

<sup>1188</sup> Production of Google, to H. Comm. on the Judiciary, GOOG-HJC-02981172-73 (Aug. 12, 2011) (on file with Comm.) ("RHS CTR has been steadily dropping over time to today's level... For the best ads on the RHS, some indication that CTR is lower than quality would suggest it should be"); GOOG-HJC-02983169-93 (Aug. 12, 2011) (stating that RHS is 16.5% of search revenue, 26% of queries have a RHS ad, and "Opportunity is accelerating due to declining RhsCTR").

<sup>1189</sup> *Id.* at GOOG-HJC-02983830 (Feb. 16, 2011).



Manhattan” was working on a redesign of Google’s desktop search results page that focused on reducing or eliminating right-hand side ads.<sup>1190</sup>

In 2016, Google rolled out the redesigned page, which eliminated the right-hand side ads while adding a fourth ad above organic listings and 3 at the bottom of the page.<sup>1191</sup> The practical effect of adding a fourth ad at the top of the search results page was to push organic listings further down, requiring users to scroll down further before reaching a non-paid result. According to *Bloomberg*, when Google tested the addition of a fourth ad, some employees objected on the grounds that the fourth ad would be of lower quality than the first organic result, but Google altered the search results page anyway.<sup>1192</sup>

Google’s decision to monetize a fourth ad at the expense of an organic listing fits a broader pattern of steps taken by Google to rank search results based on what is best for Google, rather than what is best for search users—be it preferencing its own vertical sites or allocating more space for ads. Several market participants noted that Google could afford to make these changes only once it had achieved a dominant position in the market for general search and search advertising.<sup>1193</sup> Now that Google is “unconstrained by competitors,” one market participant noted, it “consistently reserves the top of the [search engine results page] for its own vertical products or advertisements paid for through search engine marketing, pushing its rivals’ organic results to the bottom, regardless of how relevant or useful they might be.”<sup>1194</sup>

Internal data shown by one market participant to the Subcommittee demonstrates that “organic search listings have been pushed down over time, and ‘click-throughs’ (clicking to visit a site) on the first organic results have decreased by two-thirds over the past 3 years.”<sup>1195</sup> The market participant’s analysis also shows that the first organic listing on mobile now appears on the bottom of the third search results screen, which “effectively forces advertising customers to bid for a paid advertisement listing if they want their service or product to meaningfully reach consumers in a mobile search.”<sup>1196</sup>

---

<sup>1190</sup> *Id.* at GOOG-HJC-00482674–76 (Aug. 18, 2011).

<sup>1191</sup> Matt McGee, *Confirmed: Google To Stop Showing Ads On Right Side Of Desktop Search Results Worldwide*, SEARCH ENGINE LAND (Feb. 19, 2016), <https://searchengineland.com/google-no-ads-right-side-of-desktop-search-results-242997>.

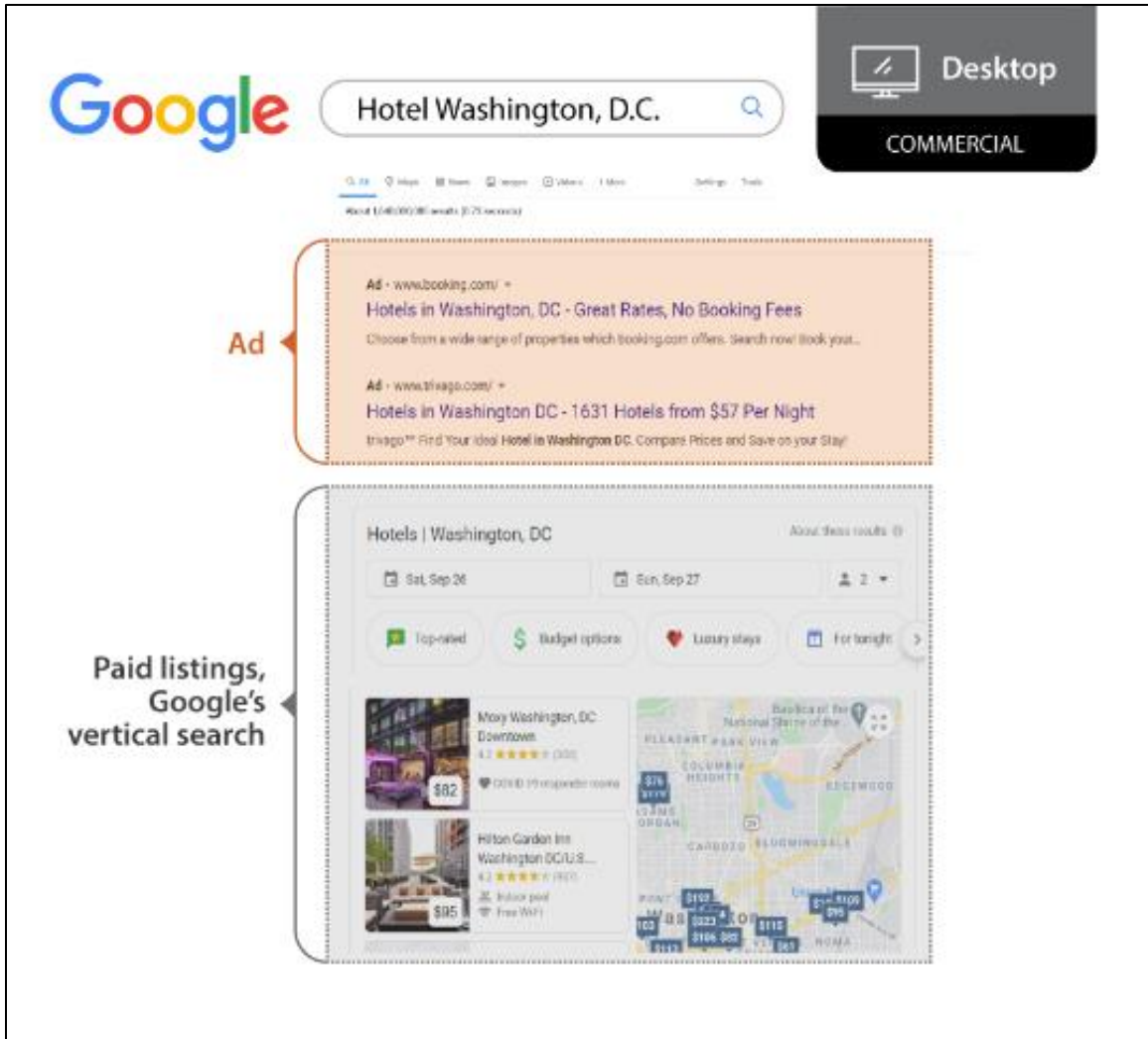
<sup>1192</sup> Gerrit De Vynck, *Google Search Upgrades Make It Harder for Websites to Win Traffic*, BLOOMBERG (July 13, 2020) <https://www.bloomberg.com/news/articles/2020-07-13/how-google-search-changes-make-it-more-expensive-to-win-traffic>.

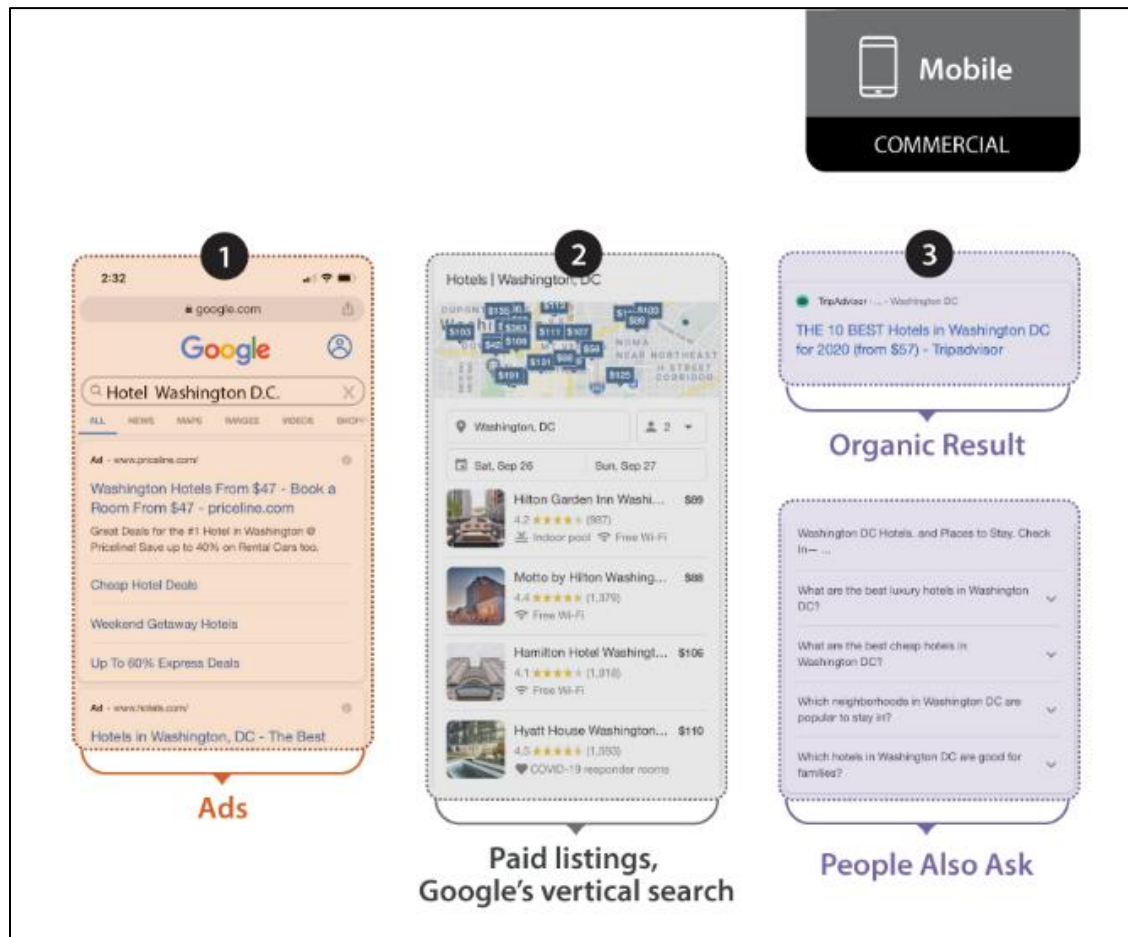
<sup>1193</sup> See, e.g., Submission from Source 972, to H. Comm. on the Judiciary, 14 (Dec. 9, 2019) (on file with Comm.); Submission from Source 115, to H. Comm. on the Judiciary, 10 (Oct. 22, 2019) (on file with Comm.); Submission from Source 3, to H. Comm. on the Judiciary, 34 (Oct. 29, 2019) (on file with Comm.); Competitors Hearing at 3 (statement of David Heinemeier Hansson, Cofounder & Chief Tech. Officer, Basecamp).

<sup>1194</sup> Submission from Source 972, to H. Comm. on the Judiciary, 14 (Dec. 9, 2019) (on file with Comm.).

<sup>1195</sup> Submission from Source 3, to H. Comm. on the Judiciary, 33 (Oct. 29, 2019) (on file with Comm.).

<sup>1196</sup> *Id.*

Google Search on Desktop Ad Placement<sup>1197</sup><sup>1197</sup> Prepared by the Subcomm.

Google Search on Mobile Phone<sup>1198</sup><sup>1198</sup> Prepared by the Subcomm.

Google Search on Desktop<sup>1199</sup>

**Google** Washington, D.C. Desktop

About 1,940,000 results (0.75 seconds)

**Organic Results**

- washington.org - Official Tourism Site of Washington DC | Washington.org  
Monuments and memorials, eclectic neighborhoods, true local flavor - Washington, DC is a place unlike any other. It's one from every level (and with lots of things to do, neighborhoods, events, places to stay).
- en.wikipedia.org - Washington, D.C. - Wikipedia  
Washington, D.C., formally the District of Columbia and also known as D.C. or Washington, is the capital city of the United States of America. Founded after the

**Google News**

**Top stories**

- Chernobyl in DC, Maryland, Virginia: What to know on Sept. 28  
NBC Washington - 13 hours ago
- DC gets colorful September night in nearly 20 years  
WUSA 9 - 1 hour ago
- Washington is experiencing some of its coldest September weather in 60+ years  
Washington Post - 1 hour ago

**Twitter Carousel**

Washington D.C. on Twitter

- Judge Chris Nielsen announces \$2.2 million COVID-19 relief in Colorado, Iowa, Maine, North Carolina, Utah, and Washington D.C. - 16 previous operators to follow president. Confirm the judge's support in some ways. Educators have enough jobs and experience. Be kind to you.
- We are calling on all Americans to join a march of faith to March for America's future in Washington, D.C. on Monday, Sept 27 at 3:00pm ET. The march will be held at the Supreme Court and demand a just and safe future for all Americans.
- Happy 10th birthday to @WhiteHouse! In 2019, the White House's opening became the largest known gathering of Native American presidents in history. The opening procession featured 25,000 representatives of 550 tribes.

**Organic Result**

dc.gov - DC  
Washington, DC. Learn to the page using ReadSpeaker. Zero Waste DC. Learn what you can recycle and help DC be a greener city!

**Top Stories**

Top sights in Washington, D.C.

- United States Capitol  
4.5 (1,102) - 15 min
- The White House  
4.5 (1,102) - 15 min
- Lincoln Memorial  
4.5 (1,102) - 15 min

**People Also Ask**

- Which state is Washington DC?
- Why is Washington DC called DC?
- Is Washington DC and Washington the same thing?
- Is Washington DC a dangerous city?

**Knowledge Panel**

Washington, D.C.  
Capital of the United States of America

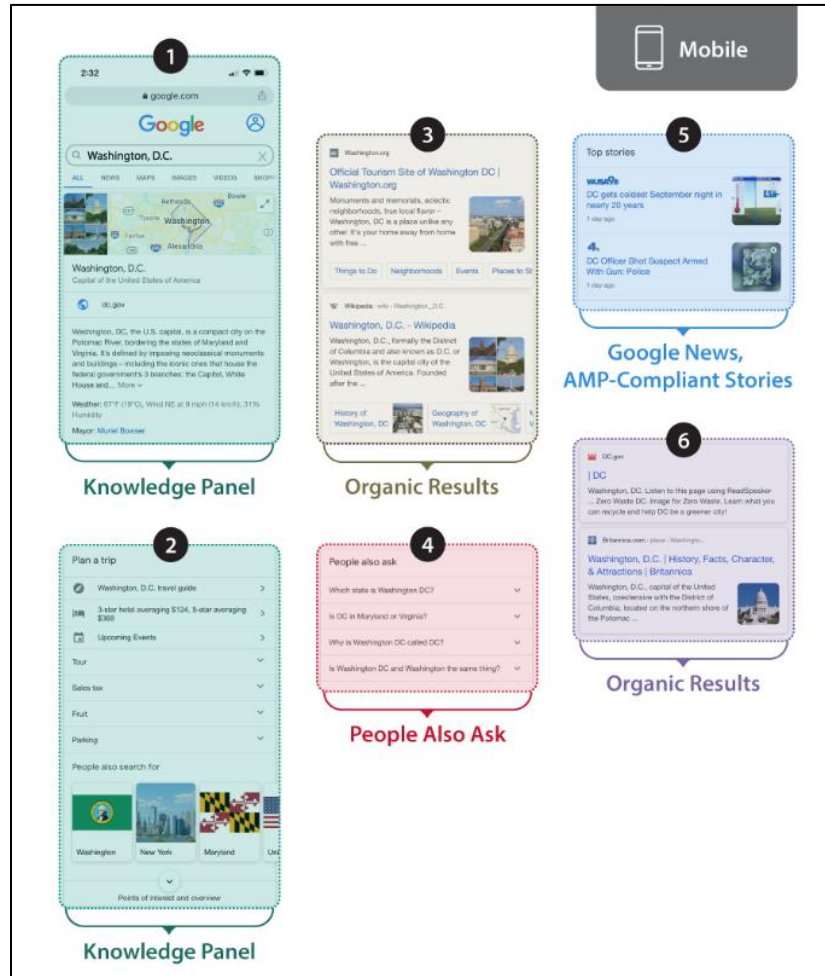
Area: 681 mi<sup>2</sup>  
Elevation: 10 ft (3 m)  
Local time: Monday 2:06 PM  
Population: 705,149 (2019)  
Founded: July 16, 1790

Plan a trip  
Washington, D.C. travel guide  
State hotel averaging \$124, from averaging \$188  
Upcoming events

Colleges and universities: The George Washington University, etc.

People also search for  
Washington, D.C. travel guide  
Washington, D.C. travel guide  
Washington, D.C. travel guide  
Washington, D.C. travel guide

<sup>1199</sup> Prepared by the Subcomm.

Google Search on Mobile Phone<sup>1200</sup>

One result of these changes is that users click less on organic search results. As Google has reduced the share of top real estate that it devotes to organic listings, studies show that organic click-through as a share of all click-through plus zero-click searches has fallen.<sup>1201</sup> According to an analysis by Rand Fishkin, the trend is especially pronounced in mobile, where organic click-through rates fell by more than 30% between January 2016 and June 2019, while paid click-through rates over that same period more than tripled.<sup>1202</sup>

For businesses that depend on Google to reach users, these trends amount to a toll hike, as traffic that firms could previously draw through organic listings is now increasingly pay-for-play. Instead of competing for users by offering high-quality webpages and services that should lead to

<sup>1200</sup> Prepared by the Subcomm.

<sup>1201</sup> Rand Fishkin, *Less than Half of Google Searches Now Result in a Click*, SPARKTORO (Aug. 13, 2019) <https://sparktoro.com/blog/less-than-half-of-google-searches-now-result-in-a-click/>.

<sup>1202</sup> *Id.* (showing organic fell from 41.1% in January 2016 to 26.68% in June 2019, a period over which paid click-through rates increased from 3.29% to 11.38%).

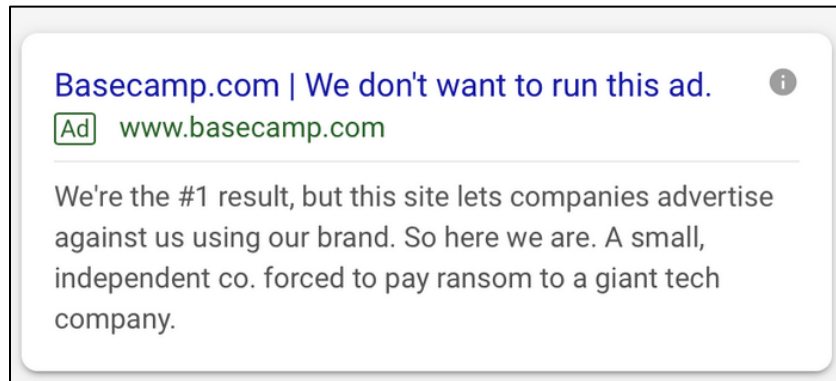


better organic search listings, these businesses must now compete for users based on how much money they pay Google. Several market participants analogized Google to a gatekeeper that is extorting users for access to its critical distribution channel.

At the Subcommittee's January 2020 field hearing in Colorado, David Heinemeier Hansson, chief technology officer and co-founder of Basecamp, testified that Google's decision to increase the number of ads listed above organic search results has hurt search users.<sup>1203</sup> Expanding on his criticism, Hansson stated that Google's decision to sell ad placement against a company's brand names is another way that Google extracts revenue from dependent businesses.

Hansson said, "Google uses this monopoly to extort businesses like ours to pay for the privilege that consumers who search for our trademarked brand name can find us because if we don't they will sell our brand name as misdirection to our competitors."<sup>1204</sup> He noted that while Google purports to recognize trademark law by prohibiting the use of trademark terms in ad copy, Google "puts the onus of enforcement on victims and does nothing to stop repeat offenders, unless, of course, the trademark terms are belonging to Google itself."<sup>1205</sup> Hansson added, "You will find no competitor ads for any of Google's own important properties."<sup>1206</sup>

#### Basecamp's Ad<sup>1207</sup>



Other market participants generally echoed these views in submissions to the Subcommittee. One wrote that Google "effectively forces its advertising customers to pay for the ability to reach

<sup>1203</sup> Competitors Hearing Transcript at 62 (statement of David Heinemeier Hansson, Cofounder & Chief Tech. Officer, Basecamp) ("Today, if a consumer goes to Google on their mobile device and search [sic] for Basecamp, the first thing that they will find is whoever bought that trademark term, which is usually one of our competitors. Ergo, consumers are not finding what they are looking for . . . They are being presented with an ad and that is the tollbooth that [Google is] erecting.").

<sup>1204</sup> *Id.* at 23.

<sup>1205</sup> *Id.*

<sup>1206</sup> *Id.*

<sup>1207</sup> Jason Fried (@jasonfried), TWITTER (Sep. 3, 2019, 4:39 PM), <https://twitter.com/jasonfried/status/1168986962704982016?lang=en>.

consumers who are searching specifically for the customer’s brand.”<sup>1208</sup> The business added, “Facing no remotely comparable advertising and search engine alternative, Google has the ability to charge potentially inflated prices for its advertising services by forcing customers to increase their bids in order to receive a more favorable position.”<sup>1209</sup>

A second factor that several third parties cited as contributing to both higher ad prices and the degradation of search for users is Google’s effort over the years to blur the distinction between organic listings and paid ads.

### Google’s Ad Shading and Labeling: 2007–2013<sup>1210</sup>



The diagram above depicts Google’s practice between 2007 and 2013 of labeling its paid ads with a shaded background. As shown below, in 2013, Google abandoned the shaded background and instead inserted a small yellow square that states “Ad.” Since 2016, Google has made various changes that make ads more subtle, culminating in a label that renders the overall appearance of paid ads much more similar to organic listings. Market participants have noted that Google also neglects to label some

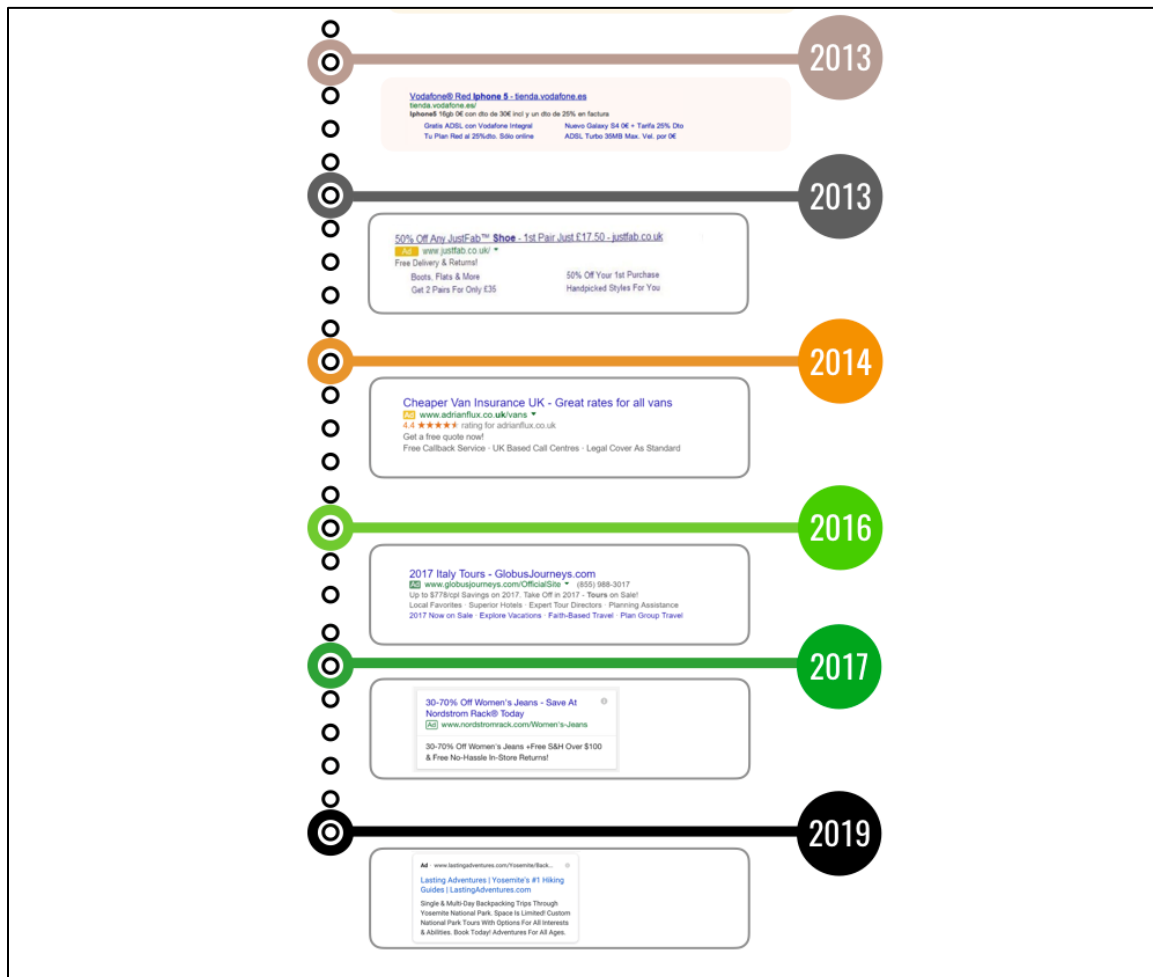
<sup>1208</sup> Submission from Source 3, to H. Comm. on the Judiciary, 32 (Oct. 29, 2019) (on file with Comm.).

<sup>1209</sup> *Id.*

<sup>1210</sup> Ginny Marvin, *A Visual History of Google Ad Labeling in Search Results*, SEARCH ENGINE LAND, (Jan. 28, 2020), <https://searchengineland.com/search-ad-labeling-history-google-bing-254332>.

paid ads entirely, particularly those that appear in Google's vertical search offerings, such as listings for hotels that appear alongside maps.<sup>1211</sup>

### Google's Ad Shading and Labeling: 2013–2019<sup>1212</sup>



The natural result of Google's decision to blur the distinction between paid ads and organic listings is that users click on more ads and less organic search results. This misleading practice has likely contributed to the growth of paid click-through rates on Google. One study found that over 59% of consumers were not aware of the difference between organic results and paid ads on Google, and about 34% of those who did recognize paid ads said they would deliberately avoid clicking on them.<sup>1213</sup> The Federal Trade Commission has recognized that search engines that fail to “prominently

<sup>1211</sup> *Google Hotel Ads*, GOOGLE, <https://ads.google.com/hotels/> (last visited Oct. 5, 2020) (offering paid listings to hotels, but neglecting to designate these listings as “ads” on the search results page).

<sup>1212</sup> Ginny Marvin, *A Visual History of Google Ad Labeling in Search Results*, SEARCH ENGINE LAND, (Jan. 28, 2020), <https://searchengineland.com/search-ad-labeling-history-google-bing-254332>.

<sup>1213</sup> Mark Jones, *Two-thirds of people don't know the difference between Google paid and organic search results*, MARKETING TECH NEWS (Sept. 6, 2018) <https://marketingtechnews.net/news/2018/sep/06/two-thirds-people-dont-know-difference-between-google-paid-and-organic-search-results/>.



distinguish” paid ads from organic listings could be liable for deceiving consumers under Section 5 of the FTC Act.<sup>1214</sup>

Making ads less conspicuous makes it more likely that users will unwittingly click on them. Market participants note that, like Google’s decision to increase the number and prominence of paid ads, Google’s decision to blur the distinction between paid listings and organic results deceives consumers and compels businesses to purchase ads from Google in order to be located by users.<sup>1215</sup>

In submissions and interviews with Subcommittee staff, businesses noted that higher advertising costs come at the expense of investments in innovation and consumer benefits.<sup>1216</sup> One vertical search provider stated:

If the search market were fair, the internet would have four times more content on it, dramatically improving the web for consumers. Google’s gatekeeper power allows it to show more advertisements for search queries with higher commercial intent. . . . The harm to consumers is not necessarily a lack of content, but a lack of quality content (requiring money to produce).<sup>1217</sup>

At the Subcommittee’s January 2020 field hearing, Hansson testified that Google’s conduct, which harms business customers and users alike, is enabled by its dominance:

Google’s monopoly on internet search must be broken up for the sake of a fair marketplace. Google would never be able to get away with such a user-hostile design as showing a full-page ad for something other than what you were searching for, if it had real competition. They would never have been able to establish their monopoly if this had been the design from the get-go. These are the monopoly spoils of complete domination.<sup>1218</sup>

At the Subcommittee’s sixth hearing, Subcommittee Chairman David N. Cicilline (D-RI) noted that Google’s search results page now features more ads and more of Google’s own sites and asked

---

<sup>1214</sup> Letter from Mary K. Engle, Assoc. Dir. for Advert. Practices, Fed. Trade Comm’n (June 24, 2013), <https://www.ftc.gov/sites/default/files/attachments/press-releases/ftc-consumer-protection-staff-updates-agencys-guidance-search-engine-industryon-need-distinguish/130625searchenginegeneralletter.pdf>.

<sup>1215</sup> Submission from Source 115, to H. Comm. on the Judiciary, 10-12 (Oct 22, 2019) (on file with Comm.); Submission from Source 972, to H. Comm. on the Judiciary, 21 (Dec. 9, 2019) (on file with Comm.); Submission from Source 3, to H. Comm. on the Judiciary (Oct. 29, 2019) (on file with Comm.).

<sup>1216</sup> Submission from Source 3, to H. Comm. on the Judiciary 32 (Oct. 29, 2019) (on file with Comm.).

<sup>1217</sup> Interview with Source 507 (July 10, 2019).

<sup>1218</sup> Competitors Hearing at 7 (statement of David Heinemeier Hansson, Cofounder & Chief Tech. Officer, Basecamp).

Google CEO Sundar Pichai whether this trend highlights a misalignment of Google’s incentives.<sup>1219</sup> He asked, “Isn’t there a fundamental conflict of interest between serving users who want to access the best and most relevant information and Google’s business model, which incentivizes Google to sell ads and keep users on Google’s own sites?”<sup>1220</sup> In response, Mr. Pichai stated that Google has “always focused on providing users the most relevant information,” and stated that Google shows ads “only for a small subset of queries where the intent from users is highly commercial.”<sup>1221</sup> However, Mr. Pichai did not explain why the percentage of queries for which Google shows ads would implicate whether or not Google’s business model compromises the integrity of its search results. Google also failed to produce data that would enable the Subcommittee to make an independent assessment of Pichai’s assertion.

### 3. Digital Advertisements

#### a. Overview and Dominance

Google makes the vast majority of its revenue by selling advertising placement across the internet. In 2019, Google’s ad revenue accounted for approximately 83.3% of Alphabet’s overall sales.<sup>1222</sup> Google is a prominent player in both search advertising and digital display advertising, and it captures over 50% of the market across the ad tech stack, or the set of intermediaries that advertisers and publishers must use to buy, sell, and place ads. Specifically, Google runs the leading ad exchange, while also running buy-side and sell-side intermediary platforms trade on the exchange.<sup>1223</sup>

Internationally, antitrust enforcers are currently investigating Google’s dominance in digital advertising, including the United Kingdom’s Competition and Markets Authority (CMA),<sup>1224</sup> and the Australian Competition and Consumer Commission (ACCC).<sup>1225</sup> In July 2020, the CMA concluded

---

<sup>1219</sup> CEO Hearing Transcript at 37 (question of Rep. David N. Cicilline (D-RI), Chairman, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary); Production of Google, to H. Comm. on the Judiciary, GOOG-HJC-01099375 (Mar. 30, 2012) (on file with Comm.); Sergey Brin & Larry Page, *The Anatomy of a Large-Scale Hypertextual Search Engine*, <http://infolab.stanford.edu/~backrub/google.html> (expressing reservations about an ad-based business model, noting that “the goals of the advertising business model do not always correspond to providing quality search to users,” and given the conflicting motives that a search engine might face between serving users the most relevant information and selling more ads, arguing that “advertising funded search engines will be inherently biased towards the advertisers and away from the needs of the consumers.”).

<sup>1220</sup> CEO Hearing Transcript at 37 (question of Rep. David N. Cicilline (D-RI), Chairman, Subcomm. on Antitrust, Commercial and Admin. Law of the H. Comm. on the Judiciary).

<sup>1221</sup> *Id.* (statement of Sundar Pichai, CEO, Alphabet Inc.); Production of Google, to H. Comm. on the Judiciary, GOOG-HJC-01099375 (Mar. 30, 2012) (on file with Comm.).

<sup>1222</sup> Alphabet Inc., Annual Report (Form 10-K) 10 (Feb. 3, 2020), <https://www.sec.gov/Archives/edgar/data/1652044/000165204420000008/goog10-k2019.htm>.

<sup>1223</sup> Competition & Mkts. Auth. Report at 10.

<sup>1224</sup> *Id.*

<sup>1225</sup> *See generally* Austl. Competition & Consumer Comm’n Report.